Indeed, it seems that the interests of both the public and the interexchange carriers strongly favor granting interim relief. Absent a stay, any risk of irreparable injury not borne by petitioners will be borne by the interexchange carriers and the public instead.[16] Moreover, as explained above (at pp. 24-25), a stay plus an accounting order or escrow mechanism will ensure a more equitable distribution of compensation and costs than would any other conceivable method of making petitioners whole.

Finally, it should be noted that the public interest strongly favors prompt disposition of this motion. Each day the order is left in effect is a day that the LECs and the Commission must spend on tariffs that may need to be entirely redone. Moreover, petitioners anticipate seeking a judicial stay absent timely administrative relief. So that the Court may have

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remittance, will behave as if access charges were only 9 cents.

[16]If the LECs prevail on appeal and competitive forces preclude them from recouping their losses through prospective price increases, the LECs might be entitled to recoup their losses retroactively from their customers. In Natural Gas Clearing House v. FERC, 965 F.2d 1066, 1073-75 (1992), the D.C. Circuit permitted just that to occur. There, the pipeline company was permitted to recover directly from shippers the amount of revenues lost as result of an erroneous FERC decision. If that same principle were applied here, reversal could subject petitioners' customers to millions of dollars in liability. If the Commission is correct that these customers are subject to competitive forces, they, like petitioners, would find it difficult to recover those losses through prospective rate increases. If an escrow account were established or an accounting order put in place, in contrast, there would be no risk that this irreparable harm would befall petitioners' customers. Instead, the only question would be how to distribute the funds placed into escrow or subject to the accounting.

sufficient time to review any such motion before petitioners' 1995 annual access filings become effective on August 1, 1995, petitioners respectfully request that the Commission rule on this request no later than June 15, 1995.

Conclusion

In light of the foregoing, it should not be difficult for the Commission to conclude that it indeed has decided a "difficult legal question" and that the equities favor the relief sought. 559 F.2d at 844. Accordingly, the petition should be granted.

Respectfully submitted,

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May 9, 1995

Zuckerman Declaration

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Price Cap Performance Review for Local Exchange Carriers	CC Docket 94-1
In the Matter of Price Cap Regulation of Local Exchange Carriers Rate-of-Return Sharing and Lower Formula Adjustment	CC Docket 93-179

DECLARATION OF HOWARD F. ZUCKERMAN

I, Howard F. Zuckerman, declare the following:

1. I am Vice President-Finance for Bell Atlantic's Carrier Services Line of Business. My responsibilities encompass management and oversight of various financial functions, including planning, reporting, analysis and assurance for the operations of the Carrier Services Line of Business. This line of business is responsible for managing the switched and special access products and services offered by Bell Atlantic's seven operating telephone companies, including the interstate services that are regulated by the Federal Communications Commission. As part of my responsibilities, I am familiar with the Commission's regulation of our prices and the market conditions for our products and services.

2. In this capacity, I am familiar with the impact on Bell Atlantic's interstate revenues of the First Report and Order in Common Carrier Docket 94-1, released by the Commission on April 7, 1995 ("Price Cap Order"), and with the impact of a related Report and Order in Common Carrier Docket 93-179, released by the Commission on April 14, 1995 ("Add Back Order").

3. The Commission's Price Cap Order modifies the price cap plan under which Bell Atlantic and certain other local exchange carriers ("LECs") are regulated. Among other things, the Order requires these LECs to reduce their current price cap index, which sets the maximum price they can charge for interstate services, by 0.7 percent for each of the previous four years of price cap regulation in which they elected a productivity offset of 3.3 percent. In Bell Atlantic's case, this requirement produces a 2.8 percent reduction in its price cap index. In addition, the Commission established three new price cap options the LECs must choose among, each of which incorporates a productivity offset that is higher than the 3.3 percent offset included in the original price cap plan. The new offsets are 4.0, 4.7 and 5.3 percent. The effect of these higher offsets is to increase the annual amount by which LECs are required to reduce their price cap indexes by 0.7, 1.4 and 2.0 percent, respectively. Finally, the Order requires a further downward adjustment in the price cap index to remove the effect of exogenous treatment that previously was afforded to costs associated with the implementation of certain accounting rule

changes, such as Statements of Financial Accounting Standards (SFAS)- 106 and 112. These reductions must be reflected in tariffs that will go into effect on August 1, 1995.

4. For each of these reductions in the price cap index that is required by the Price Cap Order, I have calculated the revenue impact on Bell Atlantic. For purposes of making this calculation, I have assumed that the demand for Bell Atlantic's interstate services remains unchanged from 1994 levels, and that all such services will be priced at the maximum amount allowed by the price cap rules. Based on Bell Atlantic's projections, this calculation understates the loss in revenue that will result from the Commission's Order. In particular, demand for Bell Atlantic's interstate services is expected to grow in the coming year. Since the lower prices dictated by the Order will produce lower revenues from this increase in volumes than would otherwise be the case, this growth will add to the amount of lost revenues calculated here. Also, I have calculated the revenue effect for only a single year, and the amounts would be greater if the Order is extended to future years.

5. The impact of each of these three changes on Bell Atlantic's interstate revenues during the tariff year is as follows:

a. The 2.8 percent reduction in Bell Atlantic's price cap index will produce a reduction of $78.8 million.

b. The new productivity offsets will produce an additional reduction of over $2.7 million for each one-tenth of a percentage point increase in the offset. This translates to a revenue reduction of $18.9 million under a 4.0 percent offset, $38.8 million under a 4.7 percent offset, and $55.8 million under a 5.3 percent offset.

c. Removing the effect of exogenous treatment for accounting changes such as SFAS 106 and 112 will reduce revenue by $20.0 million.

6. In addition to these changes, the Commission's Add Back Order changed the way Bell Atlantic and other LECs are required to calculate their earnings for purposes of determining their sharing obligation under price caps. Starting with the calculation of their sharing obligation based on 1994 earnings (which will be reflected in the tariffs that take effect August 1, 1995), the LECs must "add back" the impact of the previous year's sharing. In practice, this means any amount by which 1994 revenues were reduced because of a sharing obligation from 1993 earnings is added to the amount of revenues that were actually received in 1994. In other words, for purposes of calculating its 1994 sharing obligation, the LEC is assumed to have received revenues that it did not actually receive. The effect is to increase the LEC's sharing obligation for 1994, and to increase the amount by which its price cap index must be reduced in 1995 as a result of this sharing obligation.

7. A simple example explains the operation of this requirement. If a LEC earned $20 million that fell within the sharing range in 1993, it would reduce its price cap index by $10

million in 1994 in order to share half this amount with customers. For purposes of calculating 1994 earnings, however, the LEC must assume it received the $10 million that was shared with customers, and this amount is added to what it actually earned. If the LEC's earnings otherwise remain in the 50/50 sharing range in 1994, this means that its sharing obligation will be $5 million more than would otherwise be the case, or half of what it supposedly was allowed to retain from 1993's earnings. The process repeats itself in 1995 when, assuming the LEC again remains in the 50/50 sharing range, it must add the $5 million to its earnings (in addition to any amounts that were shared based on earnings it actually received in 1994) and share an additional $2.5 million of the amount it supposedly was allowed to retain from 1993's earnings. This process continues year-over-year, and the effect over time is to require the LEC to return essentially all the earnings that fell within the sharing range in 1993.

8. I have calculated the effect of the Add Back Order on Bell Atlantic's interstate revenues based on the assumptions outlined above. This calculation shows that for the first year alone, the add back requirement will produce an incremental revenue reduction of $17.4 million.

9. Absent a stay or the establishment of an escrow fund, Bell Atlantic is unlikely to be able to recoup the lost revenues described above in the event the Commission's Orders are overturned on appeal. As previously explained in detail in the Affidavit of Richard Beville (filed May 9, 1994) and elsewhere in

the record of this proceeding, many of Bell Atlantic's interstate services already are subject to competitive pressures that constrain the prices that can be charged for these services. This is particularly true in the case of high capacity access services that are purchased by large business customers, which already face substantial competition from competitive access providers, interexchange carriers, cable companies, utility companies and the customer's own private networks. Moreover, the scope and intensity of this competition is increasing rapidly, and will continue to do so as these existing competitors provide an expanding array of competing telephone services, and as new competitors such as wireless personal communications services begin operation. The effect of this increasing competition will be to put increased pressure on price levels.

10. Given these market conditions, obtaining permission from regulators to increase prices in an effort to recoup the lost revenues described above would be a largely illusory remedy. Assuming the Orders were in effect for only a single year, the lost revenues would total well over $100 million. In order to recoup losses of this magnitude, prices would have to be increased significantly above those in effect today. The notion that the marketplace would permit price increases of this magnitude in the future is simply not realistic. As a result, Bell Atlantic would be unable to recover these losses and would be irreparably harmed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 8, 1995

Howard F. Zuckerman

Kaeshoefer Declaration

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Price Cap performance Review	)	
for Local Exchange Carriers	)	CC Docket 94-1
	)	

DECLARATION OF DALE R. KAESHOEFER

I, Dale R. Kaeshoefer, declare the following:

1. I am General Manager-Carrier Marketing for Southwestern Bell Telephone Company (SWBT). My responsibilities encompass management and oversight of various functions, including market planning and analysis, service development and pricing for the Carrier Marketing Line of Business. This line of business is responsible for managing the switched and special access services offered by SWBT, including the interstate services that are regulated by the Federal Communications Commission. As part of my responsibilities, I am familiar with the Commission's regulation of our services, including the effects of that regulation on prices and revenues, and the market conditions for our products and services.

2. In this capacity, I am familiar with the effects on SWBT of the First Report and Order in Common Carrier Docket 94-1, released by the Commission on April 7, 1995 ("Price Cap Order").

3. The Commission's Price Cap Order significantly modifies the price cap plan under which SWBT and certain other local exchange carriers ("LECs") are to be regulated. The Order requires the price cap LECs to reduce their current price cap

indexes, by 0.7% for each of the four years of price cap regulation in which they elected the minimum productivity offset of 3.3%. For SWBT, this Commission action requires a 2.8% reduction in its price cap indexes.

Also, the Commission ordered three new productivity offset options from which the LECs must now choose. Each of these options includes a productivity offset higher than the 3.3% offset included in the original LEC price cap plan. The new offsets are 4.0%, 4.7% and 5.3%. These higher offsets require the price cap LECs to reduce their price cap indexes by an additional 0.7%, 1.4% and 2.0% respectively. In addition, the Order requires an additional reduction in price cap indexes to remove exogenous treatment of certain accounting rule changes, such as SFAS-106. These reductions must be reflected in tariffs that will go into effect on August 1, 1995.

4. For each of these reductions in price cap indexes required by the Price Cap Order, my staff has calculated the revenue effects on SWBT. These calculations conform to all relevant Commission rules and procedures regarding price cap regulation. Due to the large magnitude of price reductions required, our calculations assume average price levels at the maximum levels allowed by the newly revised price cap rules.

5. SWBT's interstate revenues would be affected by these changes during the first year as follows:

a. The 2.8% reduction in SWBT's price cap indexes decreases revenues by $55.7 million.

b. The increased productivity offsets will produce an additional reduction of almost $2 million for each one-tenth of a percentage point increase in the offset. This causes a reduction in revenue of $13.8 million under a 4.0% offset, $27.6 million under a 4.7% offset, and $39.4 million under a 5.3% offset.

c. Removing the effect of exogenous treatment for accounting changes such as SFAS 106 will reduce revenue by $40.5 million.

6. Without a stay or the establishment of an escrow fund, it is uncertain whether SWBT will be able to recoup the lost revenues described above in the event the Commission's Order is overturned on appeal. As previously explained in detail in the record of this proceeding, many of SWBT's interstate services already are subject to growing competitive pressures that constrain the prices that can be charged for these services. High capacity access services already face competition from competitive access providers, interexchange carriers, cable companies, utility companies and customer's own private networks, and are particularly susceptible to these pressures. The scope and intensity of this competition is increasing, and will continue. These competitors provide an expanding array of competing telephone services, and new competitors such as wireless personal communications services will soon begin operation.

7. Under these market conditions, a later grant of permission from the Commission to increase prices in an effort to reclaim the lost revenues described above could be an ineffective

remedy. Assuming the Price Cap Order was in effect for only a single year, the lost revenues would total approximately $110 million. In order to recoup losses of this magnitude, prices would have to be increased significantly above the rates in effect today, before the mandated reductions. In the future that would require interim price increases of about $220 million, essentially twice the reduction ordered by the Commission those in effect today. Absent a stay or the creation of an escrow fund, the Commission can provide no assurance that the marketplace would permit price increases of this magnitude in the future. As a result, it is extremely uncertain whether SWBT would be able to recover these losses, and would thus be irreparably harmed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 6, 1995.

Dale R. Kaeshoefer

CERTIFICATE OF SERVICE

I, Kathleen Joseph, hereby certify that on this 9th day of May, 1995, copies of the foregoing Joint Petition for a Partial Stay and for Imposition of an Escrow or Accounting Mechanism Pending Judicial Review, together with the supporting affidavits and Certificate of Service, were caused to be served by first-class mail, postage prepaid, upon the parties listed on the attached service list.

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Kathleen Joseph

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